

**BEFORE THE  
COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
FOR MONTGOMERY COUNTY, MARYLAND**

In the Matter of

W. Marshall Barrett  
8901 Barrowgate Court  
Potomac, MD 20854

Complainant

v.

Normandy Hills Homeowners Association  
c/o Stephan Willyard  
ComSource Management, Inc.  
8720 Georgia Avenue  
Suite 700  
Silver Spring, MD 20910

Respondents

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Case # 544-O

**DECISION AND ORDER**

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on May 15, 2002 pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the duly appointed Hearing Panel (the "Panel") having considered the testimony and evidence of record, finds, determines, and orders as follows:

**Background & Summary of Testimony and Evidence**

W. Marshall Barrett filed complaint # 544-O against Normandy Hills Homeowners Association with the Commission on September 25, 2001. In his complaint, Mr. Barrett alleged "inequity of enforcement; attempting to supersede Montgomery County law. Inadequate notification of Board meetings or not having any meetings at all; at least not public meetings." He asked the Commission to require ComSource Management, Inc. (CMI), the management company that handles many operational affairs of the Normandy Hills Homeowners Association to refrain from "selective enforcement of the HOA rules, to properly enforce rules on all members including Board members. Notify members of Board meetings; Cease non-public Board meetings." (See Barrett Complaint).

Subsequently, Stephan Willyard a CMI property manager filed a response to the complaint on November 25, 2001. In his response, Mr. Willyard provided information regarding the community and summarized his rules enforcement activities during his tenure as community manager, beginning in July 2000. With regard to Mr. Barrett's allegations that the association had not held open meetings, he stated that "No meetings have been scheduled recently. The next meeting that is anticipated is the Annual Meeting in January of 2002." (See Willyard's letter to Maureen Harzinski, CCOC staff, dated November 15, 2001).

The complaint was not resolved through mediation, and the dispute was presented to the Commission on Common Ownership Communities, which voted that the dispute involved matters within the Commission's jurisdiction, and scheduled the dispute for hearing.

Mr. Barrett requested that the Association produce records of the Association's enforcement actions over the past several years, which were provided by the Association. These records were admitted into the record of the public hearing of the dispute as Commission Exhibit number 2.

One week before the hearing on May 15, 2002, Mr. Willyard requested that the hearing be continued because he had a conflicting professional obligation. General principles of law and administrative proceedings permit a continuance for good cause. The panel considered Mr. Willyard's request in light of the facts that the hearing had been scheduled in advance for several months and that the Association could send an alternative representative from its Board of Directors or CMI. Mr. Willyard initially provided information to the effect that no alternative representative could be available, but then stated that a Board member would make an appearance. The panel concluded that good cause for the continuance had not been demonstrated, and the public hearing proceeded on May 15, 2002. The panel concluded that Mr. Willyard provided no reason other than he himself could not attend because he had a meeting elsewhere. Moreover, the Complainant's case included, as a central ground, the Respondent's failure to hold meetings and respond to various requests.

Mr. Barrett and his counsel, David Gardner, appeared for the hearing. On the representation of Mr. Barrett that his understanding was that Normandy Hills Board members Terri Cutler and Andi Cleary planned to attend the hearing, the panel delayed the start of the hearing for approximately 30 minutes to allow for their arrival.

No representative from Normandy Hills appeared, Mr. Barrett did not object to proceeding with the hearing without Normandy Hills present, and the hearing was held.

Mr. Gardner began by presenting a summary of the issues and evidence relating to the following action the Association had taken against Mr. Barrett, which Mr. Barrett alleged as illustrative of the selective enforcement of the Association's rules.

In July 2000 Mr. Barrett had received a letter from counsel for the Association informing him that there had been a number of complaints from residents about noise from Mr. Barrett's motorcycle, requesting that Mr. Barrett "cease and desist from the loud noises at unreasonable times," and referring Mr. Barrett to the portion of the community's declaration prohibiting nuisances. (See Complainant's Exhibit 1.) The Montgomery County noise ordinance was admitted into evidence and Mr. Gardner asserted that the motorcycle was within the limits permitted. Results of Mr. Barrett's written survey of neighbors were introduced indicating that several people in the neighborhood did not think noise from the motorcycle was offensive. A plat for the community was introduced showing Barrowgate Court as a private street.

Mr. Barrett testified regarding the details of some of his interactions with his neighbors regarding their reaction to the motorcycle's noise. He testified that in contrast to the Association's efforts to curb his motorcycle use, he had identified several properties where he believed violations of the community rules and covenants had occurred, yet the Board had not required the violations to be corrected. He testified that he believed there was selective enforcement of the rules concerning lawn furniture, hoses left unattended and home repairs. He showed pictures of the conditions that he contended were violations at other properties, and testified that no notices of violation had been issued to those properties, while CMI had issued notices of violations to him.

Finally, Mr. Barrett testified that since 1993, he believed there had not been regularly scheduled and noticed meetings of the Board of Directors. He testified that he believed there had been annual meetings in some, but not every year. His recollection of meetings in the past few years were that meetings occurred in March of 1999 and 2000, that no meeting was held in 2001, and that a meeting was held in 2002. Documentary evidence was consistent with these recollections.

Mr. Barrett asked the Commission to rule that the Association's action with regard to his motorcycle was invalid, that certain conditions on the properties he documented to the Commission constituted violations of the Normandy Hills covenants, that the Association's enforcement of its rules is selective, and to order the Board to hold properly noticed and scheduled meetings.

No representative from Normandy Hills appeared to testify, though Normandy Hills did submit documents, which were all accepted into evidence. The Panel admitted the Association's discovery responses as Commission Exhibit # 2. The materials in Exhibit #2 are largely letters (estimated to be more than 50 sent in the past few years) sent to homeowners identifying violations of the covenants and rules, informing residents to correct such matters as peeling paint, improper placement of satellite dishes and patio furniture, and landscaping matters. Exhibit #2 also contained the minutes of a meeting on January 24, 2002, which was apparently an annual meeting.

## **Findings of Fact**

1. Mr. Barrett's property is within the Declaration of Covenants, Conditions, and Restrictions property for the Normandy Hills Homeowners Association.
2. Mr. Barrett has operated a motorcycle within the property subject to the Declaration of Covenants, Conditions, and Restrictions for the Normandy Hills Homeowners Association. He was notified that noise from the motorcycle violated the Declaration.
3. The Association, through its management company has notified residents of violations of its rules and covenants on matters such as deteriorated paint, improper placement of fences and patio furniture, and neglected landscaping.
4. The Association conducted a meeting on January 24, 2002.

## **Conclusions of Law & Discussion**

As is evident from the simplicity and brevity of the findings of fact, the Panel concludes that with the exception of the meetings issue, there is little of substance in Mr. Barrett's complaint that falls within the Commission's jurisdiction to resolve.

The letter Mr. Barrett received from the Association more than two years ago did not sanction him, and no further action was taken. The letter did not indicate that the Board of Directors had reviewed the circumstances and declared that noise from Mr. Barrett's motorcycle constituted a violation, although the implication is strongly there. Mr. Barrett in effect seeks a declaratory judgment from the Commission that noise from his motorcycle is not a violation. While the Commission's jurisdiction would allow it to review the authority of an association to sanction or order a property owner, in this case, where the Association has made a request, and the property owner has complied, the Commission is without authority to declare that the motorcycle's noise is or is not a violation. Therefore, the panel concludes that Mr. Barrett has not raised an issue that the Commission can take any action on. Still, the owner has maintained that his compliance is, in essence, not a waiver of his appeal rights. To the extent it assists the parties, the panel can only opine that on the evidence in the record, the motorcycle noise and the circumstances described to the Panel would not support a finding of a nuisance under the standard set out in the Declaration.

Similarly, the Panel does not have the jurisdiction to broadly review enforcement actions taken against numerous property owners, who are not parties themselves, and declare that the Association selectively enforces its covenants. Nor does the Panel have the power to review conditions that the Association has not reviewed and declare them violations. The Commission's power is to review the actions of an association and property owner within the context of a dispute that involves those two parties. Mr. Barrett argued that he felt it was improper for his motorcycle use to be cited by the Association, when other properties were not cited for other violations. Mr. Barrett's

argument misconstrues the concept of selective enforcement as the Panel could examine it. If Mr. Barrett had been cited, while other motorcyclists in the community had not, then an inquiry into the issue of selective enforcement might be appropriate for the Panel to consider in judging whether the Association was interpreting its covenant correctly and applying it fairly. But the alleged violations and records of enforcement actions presented to the panel concerned a broad range of activities that could not be compared to Mr. Barrett's motorcycle noise. The panel again concludes that Mr. Barrett has not presented an issue within the Board's jurisdiction with regard to his complaint of selective enforcement.

Because the Association did not participate in the hearing, it defaulted. Still, the Panel reviewed the information before it. Although there was testimony that the Association's failure to properly notice and schedule meeting stretched over years, the Panel has no power to order a remedy for past years. The Panel concludes, based on the absence of meeting notices or records of board meetings in the record, that the Association has not complied with the requirements of its Bylaws, Articles III and VI, or the Maryland Homeowners Association Act, section 11B-111. Minutes of the 2002 annual meeting indicate that a meeting occurred, but again there is no notice provided in the record.

Based on the evidence in the record, the Panel concludes that the Association is not functioning as required by its documents and the Maryland Homeowners Association Act. The Panel notes that despite being notified of the hearing through a Summons and Statement of Charges issued by the Commission and sent by certified mail, no board member or representative of the Association appeared at the hearing. CMI in the letter cited above admitted that meetings had not been held recently or even annually.

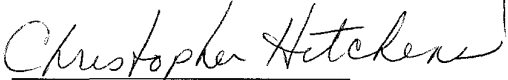
### **ORDER**

Based upon the evidence of record and for the reasons set forth above, it is this 20<sup>th</sup> day of September 2002 by the Commission on Common Ownership Communities, ORDERED that:

1. From the date of this order, forward, the Board of Directors of the Normandy Hills Homeowners Association must comply with the requirements of its Bylaws and the Maryland Homeowners Association Act, with regard to scheduling meetings and notifying homeowners of those meetings.
2. The Board of Directors must submit a report to the Commission on Common Ownership Communities, on or by December 31, 2002 and on or by June 30, 2003, documenting its compliance with its By-laws, and the Maryland Homeowner's Act in holding such meetings.
3. The reports must be signed by the Board members.

Panel members Leeds, Hitchens, and Price adopted this decision unanimously.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

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Christopher Hitchens  
Panel Chair  
Commission on Common  
Ownership Communities